

# CLIENT NEWS BRIEF

## Layoffs Under SB 98

After much anticipation, following the Governor's grim May Revise, Governor Newsom and the California Legislature reached an agreement for the 2020-21 California state budget. The final 2020-21 state budget and the enacting legislation, including the Education omnibus budget trailer bill (SB 98), reflect the profound impact COVID-19 has and continues to have on the economy and on state revenues. While cuts to K-12 public education were spared, under SB 98 various layoff options that would otherwise be available to school districts have been limited, and new requirements regarding distance learning must be considered during labor negotiations.

### Classified Implications

Section 97 of SB 98 addresses the role of classified employees in reopening school and college campuses. This section encourages governing boards of school districts, county offices of education, community college districts, and joint powers authorities to avoid classified layoffs during the 2020-21 school year.

Additionally, governing boards of a school districts, county offices of education, community college districts, and joint powers authorities are prohibited from "implementing layoffs or releasing permanent or probationary classified employees who are assigned to positions in nutrition, transportation, or custodial services" during the 2020-21 school year. The intent of this prohibition was clarified in a July 2, 2020 letter from Senator Holly Mitchell, Chair of the Senate Committee on Budget and Fiscal Review, that such prohibition includes layoff notices given to employees in these specific classifications that become effective on or after July 1, 2020. As a result, layoff procedures in process between May 2, 2020 and July 1, 2020 for employees assigned to positions in nutrition, transportation, or custodial services cannot be carried out, which may require rescission of layoff notices already issued to persons in these classifications. We recommend that local educational agencies (LEA) with pending classified layoffs work with legal counsel to ensure compliance with SB 98.

This section does not prohibit termination of probationary or permanent classified employees in the above-mentioned positions for "good cause." Therefore, LEAs still have the ability to terminate probationary and permanent classified employees for disciplinary reasons, regardless of classification. And, although discouraged, LEAs are also permitted to layoff or release probationary or permanent classified employees in positions other than those listed above. However, we recommend consulting counsel prior to making a classified termination, layoff, or release decision during the 2020-21 school year to ensure compliance with SB 98.

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## Certificated Implications

SB 98 also amends Education Code section 44955.5, the so-called “August layoff” statute. Subdivision (a) of this section permits school districts to release certificated employees “[d]uring the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies” if certain criteria are met. First, the state budget must be passed. Second, the governing board must determine that its total revenue limit per unit of average daily attendance for the fiscal year for which the Budget Act applies has not increased by at least two percent (2%). Third, the governing board must almost determine that, as a result of the revenue limit, it is “necessary” to decrease the number of permanent employees.

SB 98 amends Education Code section 44955.5 subdivision (a) so that the determination is based on local control funding formula (LCFF) apportionment rather than “revenue limit.” The budget agreement between Governor Newsom and the Legislature maintains LCFF at its 2019-20 levels (with some apportionment deferred), for the 2020-21 school year. Because LCFF for 2020-21 has not increased by at least two percent (2%) over 2019-20, normally this would enable a school district to utilize the August layoff process, if desired.

However, SB 98 also amends Education Code section 44955.5 to make the August layoff statute inoperative for the 2020-21 school year. The amendment includes an exception that certificated employees holding a position that requires an administrative or supervisory credential may be terminated pursuant to the requirements described above. Therefore, school districts are permitted to release and/or reassign certificated administrators until August 15, 2020, under Education Code sections 44955.5 and 44951.

Education Code section 44951 sets forth the process to release employees holding a position that requires an administrative or supervisory credential. Note that while administrators do not obtain tenure in an administrative position, they do progress towards tenure in a classroom teaching position and, if released from their administrative position, may have so-called “retreat rights” to a teaching position, consistent with their credential(s). Therefore, if a school district exercises the summer administrator release process and the administrator has retreat rights, they are entitled to a teaching position for 2020-21. This may result in overstaffing of teachers unless the school district has appropriate vacancies. Because the summer layoff status is suspended for teachers, a school district cannot address any such overstaffing through a summer layoff.

SB 98’s amendments to section 44955.5 are currently limited to the 2020-21 school year. Therefore, the traditional “March 15” layoff process under which layoffs would be effective in the 2021-22 school year, is still an option for school districts and county offices of education (unless the Legislature takes future action to preclude it).

## Takeaways

As a result of SB 98, school districts’ ability to layoff both classified and certificated employees is more limited for the upcoming school year. We recommend reviewing any pending classified layoffs with counsel before making any other employment decisions related to classified or certificated layoffs, releases, or terminations during the 2020-21 school year to ensure compliance under SB 98.

If you have any questions about the labor and employment implications of SB 98, or to discuss any legal matters pertaining to public agencies, please contact the authors of this Client News Brief or an attorney at one of our [eight](#)

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